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UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

Wavve Americas, Inc., a Delaware
 corporation,

Plaintiff,

vs.

Unknown Registrant Of Kokoatv.Net;
 Unknown Registrant Of Kokoa.Tv; And
 Unknown Registrant Of Vidground.Com,

Defendants.

Case No. 2:23-cv-01819-MTL

**PLAINTIFF'S MOTION FOR
 LEAVE TO SERVE DEFENDANT BY
 ALTERNATIVE MEANS**

Plaintiff wavve Americas, Inc. ("wA" or "Plaintiff"), having now learned the true identity and location of the registrant of KOKOA.TV, KOKOATV.NET, and VIDGROUND.COM, respectfully requests that the Court permit wA to serve the First Amended Complaint (filed concurrently herewith) via email pursuant to Fed. Rule Civ. Proc. 4(f)(3).

wA filed the instant lawsuit on August 30, 2023, listing the unknown registrants of KOKOA.TV, KOKOATV.NET, and VIDGROUND.COM (the "Domain Names") as defendants. (Dkt. No. 1). In response to wA's third-party discovery against NameCheap, Inc. ("NameCheap"), the registrar responsible for the Domain Names, wA learned that each of the Domain Names is owned by Tumi Max, an individual residing in Thailand.

See Declaration of Kyle W. Kellar In Support of wA's Motion for Leave to Serve Defendant by Alternative Means ("Kellar Decl."), ¶ 2 (filed concurrently herewith). wA timely filed its First Amended Complaint replacing the "doe" defendants with Tumi Max. wA now requests that the Court permit wA to serve Defendant via email pursuant Fed. Rule Civ. Prov. 4(f)(3) so that this lawsuit can efficiently proceed.

I. LEGAL PRINCIPLES

Fed. Rule Civ. Proc. 4(f) provides that:

an individual ... may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

The Ninth Circuit, in *Rio Properties, Inc v. Rio Intern. Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002), stated that "as long as court-directed and not prohibited by an international agreement, service of process ordered under Rule 4(f)(3) may be accomplished in contravention of the laws of the foreign country." Indeed, "service of process under Rule 4(f)(3) is neither a 'last resort' nor 'extraordinary relief'" and "is merely one means among several which enables service of process on an international defendant." *Id.* at 1015 (quoting *Forum Fin. Group, LLC v. President & Fellows of*

1 *Harvard College*, 199 F.R.D. 22, 23 (D. Me. 2001)). To avoid any doubt, the Ninth
 2 Circuit clarified that “we hold that Rule 4(f)(3) is an equal means of effecting service of
 3 process under the Federal Rules of Civil Procedure, and we commit to the sound
 4 discretion of the district court the task of determining when the particularities and
 5 necessities of a given case require alternate service of process under Rule 4(f)(3).” *Id.* at
 6 1016.
 7

8 Even when permitted by the Rules, “a method of service of process must also
 9 comport with constitutional notions of due process.” *Id.* In other words, “the method of
 10 service crafted by the district court must be ‘reasonably calculated, under all the
 11 circumstances, to apprise interested parties of the pendency of the action and afford them
 12 an opportunity to present their objections.’” *Id.* at 1016–17 (quoting *Mullane v. Cent.*
 13 *Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).
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15 **II. ARGUMENT**

16 This case revolves entirely around infringements of wA’s Intellectual Property rights
 17 on the Internet via three interrelated websites—KOKOATV.NET, KOKOA.TV, and
 18 VIDGROUND.COM. The owner of the Domain Names, and now the only Defendant in
 19 this case, Tumi Max, is apparently an individual residing in Thailand. (Kellar Decl., ¶¶ 2–
 20 3). Accordingly, and to properly and efficiently serve Defendant, wA requests that the
 21 Court permit wA to serve Defendant via email pursuant to Fed. Rule Civ. Proc. 4(f)(3).
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24 First, Thailand is not a signatory to the Hague Convention. *See* Status Table:
 25 Hague Convention (available at [https://www.hcch.net/en/instruments/conventions/status-](https://www.hcch.net/en/instruments/conventions/status-table/?cid=17)
 26 [table/?cid=17](https://www.hcch.net/en/instruments/conventions/status-table/?cid=17)); *Mongkol Muay Thai Corp. v. JG (Thailand) Co. Ltd.*, Case No. 22-cv-
 27 00506-BAS-KSC, 2023 WL 5599613, at *3 (S.D. Cal. Aug. 29, 2023) (“As mentioned
 28

1 above, Thailand is not a signatory to the Hague Convention.”). Thus, service on
 2 Defendant via email is permitted under Rule 4(f)(3). *See Id.*; *Kyjen Co., LLC v.*
 3 *Individuals, Corps., Ltd. Liab. Cos., P’ships, & Uninc. Assocs. Identified on Sch. A to the*
 4 *Compl.*, No. 23 Civ. 612 (JHR), 2023 WL 2330429, at *2 (S.D.N.Y. Mar. 2, 2023) (find
 5 that “service by electronic means is permitted for the ... [d]efendants ... located in ...
 6 Thailand”); *Facebook, Inc. v. Banana Ads, LLC*, No. C-11-3619 YGR, 2012 WL
 7 1038752, at *2 (N.D. Cal. Mar. 27, 2012) (finding alternative service by email upon
 8 defendant in Thailand not prohibited by international agreement and authorizing such
 9 service under Rule 4(f)(3)).

12 Second, service on Defendant by email is reasonably calculated to apprise
 13 Defendant of this litigation. As mentioned above, this litigation revolves entirely around
 14 infringements occurring on the Internet via Defendant’s websites. Thus, emailing
 15 Defendant at the email address he or she self-provided in connection with registering
 16 those same websites is reasonably calculated to reach Defendant. Indeed, in registering
 17 the Domain Names, Defendant was required to provide NameCheap with a valid email
 18 address, which was then required to be actively verified by Defendant by clicking a
 19 responsive link sent to that email address. *See* ICANN’s Whois Verification Process
 20 (available at
 21 [https://www.namecheap.com/support/knowledgebase/article.aspx/9305/5/icanns-whois-](https://www.namecheap.com/support/knowledgebase/article.aspx/9305/5/icanns-whois-verification-process/)
 22 [verification-process/](https://www.namecheap.com/support/knowledgebase/article.aspx/9305/5/icanns-whois-verification-process/)) (“When a **new domain** is registered, we will immediately send an
 23 email to the Registrant email address specified for the domain.” ... “You must verify the
 24 email address by clicking on the link within **15 calendar days** after registration. If you do
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1 not verify it within 15 calendar days, the domain will be suspended, and the DNS of the
2 domain name will be changed.”) (emphasis in original). NameCheap similarly informs
3 domain name registrants, such as Defendant, “you understand that it is important for you
4 to regularly monitor email sent to the email address associated with your account and
5 WHOIS contact information because, among other reasons, if a dispute arises regarding a
6 domain name(s) or other Service(s), you may lose your rights to the domain name(s) or
7 your right to receive the Service(s) if you do not respond appropriately to an email sent in
8 conjunction therewith.” NameCheap Registration Agreement (available at
9 <https://www.namecheap.com/legal/domains/registration-agreement/>). Thus, there is
10 substantial assurances that Defendant owns and is monitoring the email address associated
11 with the Domain Names at issue herein. There is no apparent similar process for verifying
12 Defendant’s physical address, which may or may not be valid.

13
14 Accordingly, because Defendant self-provided his or her email address to
15 NameCheap *and* verified it in the process of registering the Domain Names, service via
16 email is not only reasonably calculated to provide Defendant with actual notice of this
17 lawsuit but is the most likely method to achieve this end. See *Facebook*, 2012 WL
18 1038752, at *2 (holding that “service by email appears to be not only reasonably
19 calculated to provide actual notice to the Foreign Defendants but the method most likely
20 to apprise the Foreign Defendants of the action”).

21 **III. CONCLUSION**

22 For the above reasons, wA respectfully requests that the Court permit it to serve
23 Defendant via email at tumi993354@protonmail.com pursuant to Fed. Rule Civ. Proc.
24 4(f)(3).
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1 Dated: September 13, 2023.

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3 Respectfully submitted,

4 LEWIS ROCA ROTHGERBER CHRISTIE
5 LLP

6 By: /s/ Ryan D. Pont
7 Ryan D. Pont
8 *Attorneys for Plaintiff Wavve Americas, Inc.*
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